

## OFFICE OF SPECIAL MASTERS

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Stipulation; measles-mumps-rubella (MMR) vaccine; transverse myelitis (TM)

## UNPUBLISHED DECISION<sup>1</sup>

Peter H. Meyers, Esq., The George Washington University Law School, Washington, D.C., for Petitioner;  
Rebecca J. Trinrud, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

On June 1, 2010, the parties filed a joint stipulation concerning the petition for compensation filed by Jose P. Morel, on behalf of his minor son, Omar, and which was filed on March 13, 2007. In his petition, Mr. Morel alleged that the measles-mumps-rubella (MMR) vaccine, which is contained in the Vaccine Injury Table, 42 C.F.R. §100.3(a), and which Omar received on July 23, 2004, caused him to develop transverse myelitis (TM). Mr. Morel alleges that Omar experienced the residual effects of this injury for more than six months.

<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the special master's action in this case, the special master intends to post it on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002).

All decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, the person submitting the information has 14 days to identify and to move to delete such information before the document's disclosure. If the special master agrees that the identified material fits within the categories listed above, the special master shall redact such material from public access. 42 U.S.C. § 300aa-12(d)(4)(B); Vaccine Rule 18(b).

Respondent denies that Omar's TM and the alleged residual effects were caused by his receipt of the MMR vaccine. Nevertheless, the parties agree to the joint stipulation, attached hereto as Appendix A. The undersigned finds said stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Damages awarded in that stipulation include:

- A) **A lump sum payment of \$538,162.62**, which amount represents compensation for first year post judgment life care expenses (\$5,300.00), partial lost future earnings (\$394,925.88), and pain and suffering (\$137,936.74) **in the form of a check payable to petitioner, as the court-appointed guardian/conservator of the estate of Omar Morel, for the benefit of Omar Morel;**
- B) **A lump sum of \$6,000.00, in the form of a check payable to petitioner**, for past unreimburseable expenses; and
- C) An amount sufficient to purchase the annuity contract described in paragraph 10 of the attached stipulation (Appendix A), paid to the life insurance company from which the annuity will be purchased. The amount described herein represents compensation for remaining elements of compensation available under 42 U.S.C. § 300aa-15(a).

In the absence of a motion for review filed pursuant to RCFC, Appendix B, the clerk is directed to enter judgment in case 07-171V according to this decision and the attached stipulation.

Any questions may be directed to my law clerk, Francina Segbefia, at (202) 357-6358.

IT IS SO ORDERED.

S/ Christian J. Moran

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Christian J. Moran  
Special Master

THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

JOSE P. MOREL, on behalf of his minor son,	)	
OMAR MOREL, a minor,	)	
	)	
Petitioner,	)	
v.	)	<b>No. 07-171V</b>
	)	<b>Special Master</b>
SECRETARY OF HEALTH	)	<b>Christian Moran</b>
AND HUMAN SERVICES,	)	
	)	
Respondent.	)	
	)	

STIPULATION

The parties hereby stipulate to the following matters:

1. On March 13, 2007, Jose P. Morel ("petitioner") filed a petition for vaccine compensation on behalf of his minor son, Omar Morel ("Omar"), under the National Vaccine Injury Compensation Program. 42 U.S.C. § 300aa-10 to -34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to Omar's receipt of the measles-mumps-rubella ("MMR") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"). 42 C.F.R. § 100.3(a).
2. Omar received the MMR vaccine on July 23, 2004.
3. The vaccine was administered within the United States.
4. Petitioner alleges that Omar developed transverse myelitis ("TM") as a result of his July 23, 2004, vaccination. Petitioner further alleges that Omar experienced the residual effects of this injury for more than six months.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on behalf of Omar as a result of his condition.

6. Respondent denies that Omar's TM and the alleged residual effects were caused by the MMR vaccine.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

a. A lump sum of \$538,162.62, which amount represents compensation for first year post judgment life care expenses (\$5,300.00), partial lost future earnings (\$394,925.88), and pain and suffering (\$137,936.74) in the form of a check payable to petitioner, as the court-appointed guardian/conservator of the estate of Omar Morel, for the benefit of Omar Morel;

b. A lump sum of \$6,000.00, which amount represents compensation for past unreimbursable expenses, in the form of a check payable to petitioner, Jose P. Morel;

c. An amount sufficient to purchase the annuity contract described in paragraph 10 below, paid to the life insurance company from which the annuity will be purchased (the "Life Insurance Company"). The amount described herein represents compensation for all remaining elements of compensation.

9. The Life Insurance Company must have a minimum of \$250,000,000 capital and surplus, exclusive of any mandatory security valuation reserve. The Life Insurance Company must have one of the following ratings from two of the following rating organizations:

a. A.M. Best Company: A++, A+, A+g, A+p, A+r, or A+s;

- b. Moody's Investor Service Claims Paying Rating: Aa3, Aa2, Aa1, or Aaa;
- c. Standard and Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;
- d. Fitch Credit Rating Company, Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA.

10. The Secretary of Health and Human Services agrees to purchase an annuity contract from the Life Insurance Company for the benefit of Omar Morel, pursuant to which the Life Insurance Company will agree to make payments periodically to the court-appointed guardian/conservator of the estate of Omar Morel, or to Omar Morel once he reaches the age of majority if no guardian/conservator of the estate is declared necessary by a court of competent jurisdiction, for the following items of compensation:

- a. For future un-reimbursable FedBlue deductible and maximum out of pocket ("MOP") expenses, beginning on the first anniversary of the date of judgment, an annual amount of \$5,300.00 to be paid up to the anniversary of the date of judgment in year 2018, increasing at the rate of five percent (5%), compounded annually from the date of judgment.
- b. For future un-reimbursable neurology and urology expenses, beginning on the anniversary of the date of judgment in year 2064, an annual amount of \$109.80 to be paid for the remainder of Omar's life, increasing at the rate of five percent (5%), compounded annually from the date of judgment.
- c. For future un-reimbursable Maryland Health Insurance Plan ("MHIP") insurance premium expenses, beginning on the anniversary of the date of judgment in year 2018, an annual amount of \$2,676.00 to be paid up to the anniversary of the date of judgment in year 2029. Then, beginning on the anniversary of the date of judgment in year 2029, an annual amount of \$3,192.00 to be paid up to the anniversary of the date of judgment in year 2034. Then, beginning on the anniversary of the date of judgment in year 2034, an annual amount of \$3,660.00 to be paid up to the anniversary of the date of judgment in year 2039. Then, beginning on the anniversary of the date of judgment in year 2039, an annual amount of \$4,188.00 to be paid up to the anniversary of the date of judgment in year 2044. Then, beginning on the anniversary of the date of judgment in year 2044, an annual amount of \$4,668.00 to be paid up to the anniversary of the date of judgment in year 2049. Then, beginning on the anniversary of the date of judgment in year 2049, an annual amount of \$5,172.00 to be paid up to the anniversary of the date of judgment in year 2054. Then, beginning on the anniversary of the date of judgment in year 2054, an annual amount of \$5,676.00

to be paid up to the anniversary of the date of judgment in year 2059. Then, beginning on the anniversary of the date of judgment in year 2059, an annual amount of \$6,180.00, to be paid up to the anniversary of the date of judgment in year 2064, all amounts increasing at the rate of five percent (5%), compounded annually from the date of judgment.

d. For future un-reimbursable MHIP medical and medication deductibles, and MOP expenses, beginning on the anniversary of the date of judgment in year 2018, an annual amount of \$3,600.00 to be paid up to the anniversary of the date of judgment in year 2064, increasing at the rate of five percent (5%), compounded annually from the date of judgment.

e. For future un-reimbursable Medicare Part B premium expenses, beginning on the anniversary of the date of judgment in year 2064, an annual amount of \$1,326.00 to be paid for the remainder of Omar's life, increasing at the rate of five percent (5%), compounded annually from the date of judgment.

f. For future un-reimbursable Medicare Part B deductible expenses, beginning on the anniversary of the date of judgment in year 2064, an annual amount of \$155.00 to be paid for the remainder of Omar's life, increasing at the rate of five percent (5%), compounded annually from the date of judgment.

g. For future un-reimbursable Blue RX Medicare Part D premium, deductible, and co-insurance expenses, beginning on the anniversary of the date of judgment in year 2064, an annual amount of \$1,140.00 to be paid for the remainder of Omar's life, increasing at the rate of five percent (5%), compounded annually from the date of judgment.

At the sole discretion of the Secretary of Health and Human Services, the periodic payments may be provided to petitioner in monthly, quarterly, annual or other installments. The "annual amounts" set forth above describe only the total yearly sum to be paid to petitioner and do not require that the payment be made in one annual installment. Petitioner will continue to receive the annuity payments from the Life Insurance Company only so long as Omar is alive at the time that a particular payment is due. Petitioner shall provide written notice to the Secretary of Health and Human Services and the Life Insurance Company within twenty (20) days of Omar's death.

11. The annuity contract will be owned solely and exclusively by the Secretary of Health and Human Services and will be purchased as soon as practicable following the entry of a

judgment in conformity with this Stipulation. The parties stipulate and agree that the Secretary of Health and Human Services and the United States of America are not responsible for the payment of any sums other than the amounts set forth in paragraph 8 herein and the amounts awarded pursuant to paragraph 12 herein, and that they do not guarantee or insure any of the future annuity payments. Upon the purchase of the annuity contract, the Secretary of Health and Human Services and the United States of America are released from any and all obligations with respect to future annuity payments.

12. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

13. Payments made pursuant to paragraph 8 and any amount awarded pursuant to paragraph 12 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

14. The parties and their attorneys further agree and stipulate that, except for any award for reasonable attorney's fees and costs incurred in this proceeding and past unreimbursed expenses, the money provided pursuant to this Stipulation either immediately or as part of the annuity contract will be used solely for the benefit of Omar Morel, as contemplated by a strict construction of 42 U.S.C. § 300aa-15(a) and (d), and subject to the conditions of 42 U.S.C. § 300aa-15(g) and (h).

15. Petitioner represents that he presently is, or within 90 days of the date of judgment will become, duly authorized to serve as guardian/conservator of Omar's estate under the laws of the State of Maryland. No payments pursuant to this Stipulation shall be made to petitioner until petitioner provides the Secretary with documentation establishing his appointment as guardian/conservator of Omar's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as guardian/conservator of the estate of Omar Morel at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as guardian/conservator of the estate of Omar Morel upon submission of written documentation of such appointment to the Secretary.

16. In return for the payments described in paragraphs 8 and 12, petitioner, in his individual capacity and as legal representative of Omar, on behalf of himself, Omar, and his heirs, executors, administrators, successors or assigns, does forever and fully expressly release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions, causes of action, agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature on account of, or in any way growing out of, any and all known or unknown personal injuries to or death of Omar Morel resulting from, or alleged to have resulted from, the MMR vaccine administered to Omar on July 23, 2004, as alleged by petitioner in a petition for vaccine compensation filed on March 13, 2007, in the United States Court of Federal Claims as petition No. 07-171V.

17. If Omar should die prior to petitioner receiving the payments described in paragraphs 8 (a) and (b), this agreement shall be considered voidable upon proper notice to the Court on behalf of either or both of the parties.

18. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be null and void at the sole discretion of either party.

19. This Stipulation expresses a full and complete settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 12 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to.

20. All rights and obligations of petitioner hereunder shall apply equally to his successors and assigns as legal representatives of the estate of Omar Morel.

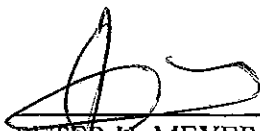
END OF STIPULATION

Respectfully submitted,


**PETITIONER:**

  
JOSE P. MOREL

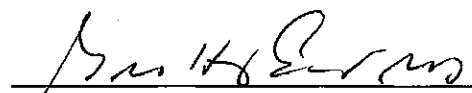
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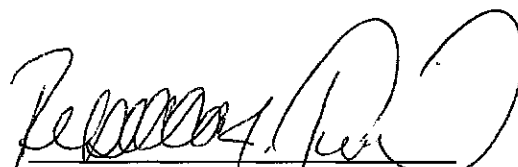
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Dated: June 1, 2010